

May 25, 1999

RECEIVED**MAY 25 1999****FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

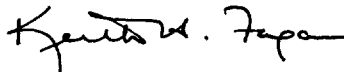
Re: *Ex Parte* Notification
Direct Access to the INTELSAT System
IB Docket No. 98-192; File No. 60-SAT-ISP-97

Dear Ms. Salas:

The Satellite Users Coalition ("SUC"), consisting of AT&T Corp., MCI WorldCom, Inc., and Sprint Communications Company, L.P., submitted an *ex parte* statement in the above-referenced proceeding consisting of testimony submitted to the Subcommittee on Communications of the Senate Committee on Commerce, Science and Transportation. The SUC testimony addresses direct access to the INTELSAT system, as well as other matters purportedly at issue in this proceeding, i.e., "fresh look" for the SUC members' contracts with COMSAT Corporation ("COMSAT") and "portability" of COMSAT's INTELSAT capacity.

As COMSAT pointed out in Reply Comments filed on January 29, 1999, neither "fresh look" nor "portability" was mentioned in the Commission's *Notice of Proposed Rulemaking* initiating this proceeding, and the Commission is therefore precluded from adopting either measure. Accordingly, the views of the SUC members on these matters are not "important information that the Commission should consider in this proceeding." However, to the extent that the Commission is inclined to consider these views, COMSAT respectfully requests that it also consider the views in the attached document, entitled "COMSAT's Response to the Satellite Users Coalition." This document was also submitted to the Senate Subcommittee on Communications.

Respectfully submitted,



Keith H. Fagan

cc: Mr. Roderick Porter
Mr. James Ball
Mr. Sande Taxali
Mr. Michael McCoin
Ms. Cathy Hsu

Attachment

COMSAT's Response

to

**“Joint Testimony of AT&T, MCI WorldCom
and Sprint (Satellite Users Coalition)” on S. 376**

COMSAT'S RESPONSE TO THE SATELLITE USERS COALITION

The April 30 testimony of the "Satellite Users Coalition" (AT&T, MCI WorldCom and Sprint) is riddled with false claims about COMSAT and its role in INTELSAT. While time and space constraints do not permit us to correct every one of the Coalition's misstatements, we would like to draw the Committee's attention to the following points.

- **COMSAT is not a "middleman."** The Coalition claims that, if direct access were available, it would not be forced to buy INTELSAT capacity through an alleged "middleman," COMSAT, that plays no role in providing the service. In fact, if it were not for COMSAT, there would be no INTELSAT service. Congress did not create COMSAT to be a middleman without a role. Rather, it created COMSAT to participate in the INTELSAT system through private capital invested and risked by ordinary Americans. Congress even directed that the stock initially offered by COMSAT "be sold at a price not in excess of \$100 for each share and in a manner to encourage the widest possible distribution to the American public." In short, COMSAT is the owner of the U.S. portion of the INTELSAT system. Its role is to invest in the system, to ensure that the system has the capacity to meet the needs of U.S. customers, and to offer that capacity on a non-discriminatory basis to all comers – including its competitors.

- **Direct access abroad is intended to solve problems not present in the U.S.** The Coalition claims that direct access is now available in 94 countries, but in fact only six of those countries have the kind of unrestricted direct access that is proposed here (and none has "fresh look" or "portability"). Moreover, as the Executive Branch pointed out in its testimony before this Committee, direct access in foreign countries is intended to cure a problem that does not exist in the U.S. -- the control by a single dominant provider of all international facilities and services. Unlike virtually all other INTELSAT Signatories, COMSAT is neither horizontally nor vertically integrated. It does not own fiber cable facilities and does not provide local and long-distance telephone services. Its basic role is to provide non-discriminatory access to INTELSAT space segment.

- **COMSAT is not a monopolist.** The Coalition claims that COMSAT's exclusive access to INTELSAT is "the only monopoly in the U.S. telecommunications market that was not addressed by the Telecommunications Act of 1996." In fact, COMSAT has no monopoly. Today, there are more facilities-based alternatives to both COMSAT and INTELSAT than ever before; indeed, the Coalition members transmit fully 85% of their international traffic over their own cable facilities. Where, as in this case, there are competitive alternatives available, the right to control access to one's own facilities simply does not confer monopoly power. That is why, in April 1998, the FCC reclassified COMSAT as a non-dominant carrier in markets comprising over 90% of its INTELSAT business.

- **COMSAT does not charge excessive markups.** The Coalition claims that, according to FCC data, COMSAT's "markups" over INTELSAT tariffs for international voice services average over 100%. However, both the FCC and the National Economic

Council have concluded that the difference between COMSAT's rates and INTELSAT's utilization charges is not a markup (and that such claims are "misleading"), because the IUCs do not reflect all of COMSAT's costs. In fact, COMSAT's operating margins are lower than those of its competitors.

- **COMSAT has not raised short-term rates by 500%.** The Coalition claims that, in 1995, COMSAT raised its monthly rates for some services by 500% (even though underlying INTELSAT rates did not change) in an effort to "force" customers to commit to long-term contracts. COMSAT did revise its rate structure for one service ("IBS" or private line) in 1995, but INTELSAT also raised its rates for the service and, in addition, new capabilities were added to the service offering. The FCC reviewed COMSAT's rates for "New IBS" service and allowed them to take effect without any delay. Moreover, in 1997, COMSAT lowered its rates to the carriers for New IBS.

- **COMSAT does sell preemptible services.** The Coalition claims that COMSAT will not sell the preemptible leases that INTELSAT offers. In fact, the majority of COMSAT's leases are preemptible, and COMSAT has leased such capacity to two of the three Coalition members in the last six months. However, for business reasons, COMSAT does not currently sell preemptible leases for services -- like switched-voice -- that are not truly preemptible. Customers should not expect to pay preemptible rates for what is really a non-preemptible service.

- **COMSAT's affiliates do not have a competitive advantage over non-affiliated carriers.** The Coalition claims that COMSAT and its affiliate, COMSAT Government Systems, Inc. (CGSI), enjoy a "significant advantage" over other U.S. carriers for government contracts because COMSAT's alleged 68% markups are "just an inter-affiliate transfer for CGSI -- but a very real cost of business for carriers like AT&T, MCI Worldcom and Sprint." However, this very argument was rejected both by the FCC in a formal complaint proceeding and by the GAO in a bid protest proceeding. There is absolutely no basis for the claim that the government and U.S. taxpayers are paying CGSI more than they should for INTELSAT capacity.

- **COMSAT's role does not interfere with freedom of contract.** The Coalition claims that COMSAT's "monopoly" role is "contrary to the freedom of contract that makes competition possible." But it is the carriers, not COMSAT, that want to interfere with the right to contract by enlisting the government to invalidate contracts that were freely and fairly negotiated. Both the FCC and a U.S. District Court have held that COMSAT's inter-carrier contracts are not anti-competitive, and the FCC has stated that these contracts do not prevent the carriers from switching service providers. Under these circumstances, it is truly ironic that the carriers should be invoking the principle of freedom of contract. What they are really seeking is the freedom to break contracts.

- **Direct access would not result in any savings for consumers.** Finally, the Coalition claims that "consumer savings from direct access would be more than \$1 billion over a ten-year period." This claim is baseless, as COMSAT demonstrated more than a year ago. First, the \$1 billion figure is grossly inflated. Since privatization will

occur within the next two years, there will be no savings "over a ten-year period." Second, the Coalition's claim is based on a comparison of COMSAT's alleged 68% markup with a so-called "competitive" markup. When COMSAT's actual margins are used as the basis for this calculation, the "savings" completely disappear. (This is consistent with prior FCC decisions rejecting direct access because it would not produce savings, but rather shift costs from COMSAT to the carriers or INTELSAT.) Third, the claim that consumers (as opposed to carriers) would benefit from direct access is completely unfounded. COMSAT's charges comprise less than 1½% of the cost of an international telephone call, and the carriers have conspicuously refrained from making a commitment to pass through any savings they might realize from direct access.